



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

July 2, 2014

Ms. Shellie Hoffman Crow  
Counsel for Cuero Independent School District  
Walsh, Anderson, Gallegos, Green and Treviño, P.C.  
P.O. Box 2156  
Austin, Texas 78768

OR2014-11400

Dear Ms. Crow:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 527721.

The Cuero Independent School District (the "district"), which you represent, received three requests for (1) information given to school board members regarding certain agenda items at specified meetings, (2) all correspondence between the superintendent and school board president regarding specified grievances, (3) all grievances filed during a specified time against three named individuals and the proposed remedies regarding these grievances, (4) specified written reprimands of three named individuals, (5) a principal's resignation letter, (6) employee evaluations of three named individuals, (7) minutes from a particular school board meeting, (8) audio or video recordings of six specified school board meetings, and (9) the salaries of four named individuals. You state the district will withhold information pursuant to the Family Educational Rights and Privacy Act ("FERPA"), section 1232g of title 20 of the United States Code.<sup>1</sup> You claim the submitted information is excepted from disclosure under sections 552.101 and 552.102 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

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<sup>1</sup>The United States Department of Education Family Policy Compliance Office (the "DOE") has informed this office FERPA does not permit state and local educational authorities to disclose to this office, without parental or an adult student's consent, unredacted, personally identifiable information contained in education records for the purpose of our review in the open records ruling process under the Act. The DOE has determined FERPA determinations must be made by the educational authority in possession of the educational records. We have posted a copy of the letter from the DOE on the Attorney General's website at <http://www.oag.state.tx.us/open/20060725usdoe.pdf>.

Initially, we note you have not submitted information responsive to the request for the minutes from a specified meeting. Section 551.022 of the Open Meetings Act, chapter 551 of the Government Code, expressly provides the “minutes and tape recordings of an open meeting are public records and shall be available for public inspection and copying on request to the governmental body’s chief administrative officer or the officer’s designee.” Gov’t Code § 551.022. We note the minutes of a public meeting of a governmental body are public records when entered, are public in whatever form they exist, and public access may not be delayed until formal approval is obtained. Open Records Decision No. 225 (1979). We also note, as a general rule, the exceptions to disclosure found in the Act generally do not apply to information other statutes make public. *See* Open Records Decision Nos. 623 at 3 (1994), 525 at 3 (1989). Accordingly, we conclude section 551.022 is applicable to the requested minutes in whatever form they exist. However, we note the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990). Furthermore, the Act does not require a governmental body to compile information or prepare new information. *See Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.—San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). However, a governmental body must make a good faith effort to relate a request to information held by the governmental body. *See* Open Records Decision No. 561 at 8 (1990). You state the requested minutes have not been approved by the board and were not in a true draft form at the time the request for information was received. While the district is not required to create documents that did not exist when it received the request, documents from which the requested minutes may be derived are responsive to this request. Therefore, to the extent the requested minutes exist in any format, the requested minutes of a public meeting are subject to section 551.022 of the Government Code and the district must release them pursuant to section 551.022.

Next, we note the district has not submitted information responsive to some of the remaining requested categories of information. Therefore, to the extent information responsive to the remaining categories of the request exists and was not redacted by the district pursuant to FERPA, we assume you have released it to the requestor. *See* Open Records Decision No. 664 (2000) (if governmental body concludes that no exceptions apply to requested information, it must release information as soon as possible). If you have not released any such information, you must do so at this time. *See* Gov’t Code §§ 552.301(a), .302.

Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” *Id.* § 552.101. This section encompasses information protected by other statutes. Section 21.355 of the Education Code provides that “[a] document evaluating the performance of a teacher or administrator is confidential.” Educ. Code § 21.355(a). This office has interpreted section 21.355 to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or an administrator. *See* Open Records Decision No. 643 (1996). Additionally, a court has concluded that a written reprimand constitutes an evaluation for purposes of section 21.355, as it “reflects the principal’s judgment regarding [a teacher’s] actions, gives corrective direction, and provides

for further review.” *Abbott v. North East Indep. Sch. Dist*, 212 S.W.3d 364 (Tex. App.—Austin 2006, no pet.). In Open Records Decision No. 643, we determined a “teacher” for purposes of section 21.355 means a person who (1) is required to and does in fact hold a teaching certificate under subchapter B of chapter 21 of the Education Code or a school district teaching permit under section 21.055 and (2) is engaged in the process of teaching, as that term is commonly defined, at the time of the evaluation. *See* ORD 643 at 4. We also determined an “administrator” for purposes of section 21.355 means a person who (1) is required to and does in fact hold an administrator’s certificate under subchapter B of chapter 21 of the Education Code and (2) is performing the functions of an administrator, as that term is commonly defined, at the time of the evaluation. *See id.* at 5. We further determined that “teacher interns, teacher trainees, librarians, educational aids and counselors cannot be teachers or administrators for purposes of section 21.355.” *See id.* at 5.

You assert the submitted information consists of evaluative documents that are confidential under section 21.355. You contend the submitted information evaluates the performance of certified teachers and administrators. We understand most of the employees concerned were acting in those capacities when the remaining evaluative documents were created. However, you do not inform us the teachers and administrators in question held the requisite certificates under chapter 21 of the Education Code at the time of their evaluations. *See* ORD 643 at 4. Accordingly, we must rule conditionally. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent the teachers and administrators at issue held the appropriate certificate under chapter 21 at the time the information at issue was created.<sup>2</sup> However, to the extent the teachers and administrators at issue did not hold the requisite certificates under chapter 21 of the Education Code at the time the information at issue was created, the information at issue is not confidential under section 21.355 of the Education Code and may not be withheld on that basis under section 552.101 on that basis. We note one of the employees at issue holds the position and performs the duties of a Library Manager. Further, the evaluations and reprimand at issue pertain to this employee’s performance as a Library Manager. Thus, we find you have not shown how this employee is certified as a teacher or administrator, and therefore, have not shown how this information evaluates the performance of a teacher or administrator for the purposes of section 21.355. Further, we find you have not demonstrated that any of the remaining information at issue evaluates the performance of a teacher for purposes of section 21.355; thus, none of the remaining information may be withheld on that basis under section 552.101 of the Government Code.

Section 552.102(a) of the Government Code excepts from disclosure “information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” Gov’t Code § 552.102(a). You assert the privacy analysis under section 552.102(a) is the same as the common-law privacy test under section 552.101 of the

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<sup>2</sup>In that instance, as our ruling is dispositive, we need not address your remaining argument against disclosure of this information.

Government Code, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Hubert v. Harte-Hanks Texas Newspapers, Inc.*, 652 S.W.2d 546, 549-51 (Tex. App.—Austin 1983, writ ref'd n.r.e.), the court of appeals ruled the privacy test under section 552.102(a) is the same as the *Industrial Foundation* privacy test. However, the Texas Supreme Court has expressly disagreed with *Hubert's* interpretation of section 552.102(a), and held the privacy standard under section 552.102(a) differs from the *Industrial Foundation* test under section 552.101. See *Tex. Comptroller of Pub. Accounts v. Attorney Gen. of Tex.*, 354 S.W.3d 336 (Tex. 2010). The Supreme Court also considered the applicability of section 552.102(a) and held it excepts from disclosure the dates of birth of state employees in the payroll database of the Texas Comptroller of Public Accounts. See *id.* at 348. Upon review, we find you have failed to demonstrate the applicability of section 552.102(a) to any of the remaining information, and the district may not withhold any of the remaining information on this basis.

In summary, to the extent the requested minutes exist in any format, the district must release them pursuant to section 551.022 of the Government Code. The district must withhold the information we have marked under section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code to the extent the teachers and administrators at issue held the appropriate certificate under chapter 21 at the time the information at issue was created. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.texasattorneygeneral.gov/open/orl\\_ruling\\_info.shtml](http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,



Britni Fabian  
Assistant Attorney General  
Open Records Division

BF/tch

Ref: ID# 527721

Enc. Submitted documents

c: Requestor  
(w/o enclosures)